



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00599

Appearances

For Government: Rhett Petcher, Esquire

For Applicant: *Pro se*

01/31/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On April 3, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement).¹ Applicant answered the SOR on April 17, 2017, admitting all allegations and offering explanations. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on May 2, 2017. DOHA issued a notice of hearing on May 12, 2017, setting the hearing for June 6, 2017. The hearing was convened as scheduled.

The Government offered two documents, accepted without objection as exhibits (Exs.) 1-2. Applicant offered testimony and four exhibits, accepted without objection as Exs. A-D. The transcript (Tr.) was received on June 21, 2017, and the record was closed. Based on my review of the documentary evidence, testimony given, and the

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after September 1, 2006. Since that time, the AG were amended as *Guideline H: Drug Involvement and Substance Abuse*, and it is now in effect for any adjudications on or after June 8, 2017. This includes the decision here.

Applicant's demeanor, I find that Applicant failed to mitigate drug involvement security concerns.

Findings of Fact

Applicant is 30 years old, single, and has no children. After graduating from high school in May 2005, he began an undergraduate program in August 2005. Due to various interruptions, his matriculation was interrupted. These interruptions included time off to attend an outpatient treatment program to address his bipolar disorder, as well as time away from university due to a romantic breakup. Ultimately, Applicant graduated in May 2012, after a challenging period during which he got his life under control. (Tr. 22) In August 2015, he earned a master's degree in aerospace engineering. (Tr. 25) After receiving his master's degree, he continued working for his academic department until he began his current position.

Since April 2016, Applicant has been working for the same employer as a systems engineer. He is considered a superior employee. His employer has a policy against on-duty and off-duty drug use. It conducts random drug testing. Applicant has been subject to drug testing only once, when he initially applied for the position.

In April 2002, while in high school, Applicant began using marijuana with school friends. By March 2003, he began purchasing the drug for personal and social consumption. During high school, he used the drug on a monthly basis. After high school through 2005, his marijuana use increased to a few times a week. He did, however, refrain from marijuana between January 2010 and January 2011, "mostly trying to get [his] head on straight." (Tr. 28) During that year, he eschewed all drugs and alcohol as he focused on his mental and physical health issues.

In January 2011, Applicant started using marijuana about two times a month. This increased to two to five times a week in about November 2012, mostly as a way to relax from school-related pressures, overcome insomnia, and socialize. (Tr. 31) When consumed in social settings, he used it with a "long list of people," including the circle of friends he still maintains. Some of those individuals still use the drug. (Tr. 31-32) Applicant finally quit using it a couple of months after he completed his master's degree program in 2015, exerting "a bit of effort" to get out of his habit. (Tr. 34).

Today, Applicant sees the people with whom he formerly used drugs when he returns to his home state, about every three of four months.² (Tr. 32) When he is with them and they use marijuana, he will remain in the room or on the premises where they use the drug. He has told them that he would prefer them not to use it around him. Thus far, he has not pressed the issue because he thought it "wasn't fair of [him] to ask them to discontinue that which" might be legal locally. (Tr. 63) Applicant stresses, however, that he is mostly in his current state of residence and he does not want to use drugs again going forward. (Tr. 64)

² Applicant returns to his former home state to continue psychological counseling. He has no friends in his current area of residence who use drugs. (Tr. 61)

Also during his collegiate years, and due to the influence of his present circle of friends, Applicant bought and socially used MDMA (“Ecstasy”³) and cocaine with varying frequency from about May 2009 to September 2015. (Tr. 36) He obtained the MDMA and cocaine from the “dark web.” (Tr. 38-41) He used MDMA about 18-20 times and the cocaine at least seven times. He was spurred on to use cocaine by a “desire for adventure,” as well as basic temptation. (Tr. 45-46) Like Applicant, his friends have also ceased using this drug. In about April 2009 and around December 2013, he used LSD, purchasing it once. One cohort who shared LSD with Applicant no longer uses the drug, and Applicant has no contact with the other individual.

Between April 2008 to July 2013, Applicant used and purchased psilocybin mushrooms. The first time he used that drug, he was on vacation abroad with a former girlfriend. The other time he used it, he purchased it on the “dark web” and used it with some friends, most of whom he no longer has contact. (Tr. 51-52) At least one friend with whom he used the drug still uses it. (Tr. 52-53) Indeed, Applicant was with that friend on a trip abroad in the past year. There, that acquaintance used psilocybin mushrooms. (Tr. 52-55)

Applicant has never received drug counseling and he has never been diagnosed as drug dependent. (Tr. 55) He has never been arrested for drug involvement. Applicant submitted favorable recommendations from three peers. (Exs. A-C) While Applicant has used drugs with all three individuals, two of them still use marijuana. (Tr. 57-58) Applicant stresses that while he still associates with those who use illegal drugs, he no longer attends music festivals or goes to clubs where they might be available, although he still travels to destinations, here and abroad, where drugs are readily available. With his answer to the SOR, Applicant submitted a statement of intent not to use drugs in the future. Should he violate that commitment, he is willing to lose any security clearance granted. (Answer to the SOR; Tr. 60-62) He has been drug-free since October 2015, his longest period of abstinence since January 2010 to January 2011.⁴

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

³ According to the National Institute on Drug Abuse (NIDA), MDMA (3,4-methylenedioxy-methamphetamine) is a synthetic drug that alters mood and perception (awareness of surrounding objects and conditions). It is clinically similar to both stimulants and hallucinogens. It is also known as “Ecstasy” or “Molly.” See <https://www.drugabuse.gov/publications/drug-facts/mdma-ecstasy-molly>.

⁴ Applicant clarified that this period was not a conscious effort to abstain from drugs permanently. It was only a temporary break from illegal drug use while he addressed other issues. (Tr. 69-70)

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, can raise questions about an individual's reliability and trustworthiness. This is because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Such use also raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, Applicant, now age 30, admitted he purchased and used marijuana and other illegal drugs between his early high school years through about October 2015. This is sufficient to raise AG ¶ 25(a): any substance misuse, and ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia. The Government's

substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome this problem, and has established a pattern of abstinence, including but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's illegal use of drugs continued from early high school through October 2015, a little over two years ago. His drug use included a variety of controlled substances (ie. marijuana, cocaine, ecstasy, LSD, psilocybin mushrooms) over many years, usually while socializing with peers. Applicant still keeps social contact with some of these peers. Although he has asked those who still use illegal drugs to refrain from their use around him, they have not honored his request. This raises serious questions concerning his judgment and his commitment, not just to stay drug-free, but also to avoid situations involving illegal drug activity. Consequently, AG ¶ 26(a) does not apply.

Applicant has, however, stopped attending public venues and events where illegal drugs are freely used. He has also signed a statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. He seems committed to remaining drug-free. AG ¶ 26(b)(2)-(3) apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and conducted a whole-person analysis based on the record. In addition to Applicant's past drug involvement, I considered his life, past and present, and candor at the hearing.

Applicant is a single, 30-year-old systems engineer who has worked for the same employer since April 2016, about a year after earning a master's degree in his field, and a short period of post-graduate employment in his academic department. His matriculation from high school through college was protracted, due to multiple problems. He has since learned to keep his personal obstacles and issues at bay, and he is capable of superior work.

While in high school in 2002, Applicant began using marijuana with school peers. By March 2003, he began purchasing the drug for personal and social consumption. He refrained from marijuana use between January 2010 and January 2011 while trying to get other personal issues resolved. From there, he also used cocaine, Ecstasy, LSD, and psilocybin mushrooms at various times and for varying frequencies. He became drug-free in October 2015.

Applicant has made genuine strides to make changes in his life and adapt to a drug-free lifestyle after abusing controlled substances for a decade. He has relocated away from his drug using peers and former venues. He is starting a successful career in his chosen field. He has proven his ability to adapt and comport his behavior by making several adjustments that have improved his life, including laudable success keeping his psychological issues under control.

Two factors, however, sustain security concerns. First, Applicant has been drug-free since October 2015, after a decade of illegal drug use. This is particularly worrisome given the assortment of drugs used and his access of such substances from the "dark web." Less than three years of abstinence is insufficient to demonstrate a firm commitment to remaining drug-free. It is also deficient for demonstrating a commitment to avoiding contact with people and places who break Federal law by using drugs.

Second, Applicant continues to socialize with individuals with whom he once used illegal drugs. He encounters such friends every three or four months when he returns to his past state of residence and, in one or more occasions, while on trips abroad with such individuals. Those peers who still use illegal drugs have not respected Applicant's request that they refrain from drug use in his presence. In response, Applicant has failed to extricate himself from their presence when they use controlled substances. This most recently occurred within the past year while abroad with one of his former school peers. Such circumstances not only present temptation, but, more importantly, demonstrate poor judgment. In light of these factors, I find that insufficient time has passed for Applicant to demonstrate the behavior sufficient to mitigate drug involvement and substance misuse security concerns. Consequently, I conclude drug involvement and substance misuse security concerns are not mitigated. Clearance is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
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Subparagraphs 1.a-1.j:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge